

## Public Safety and Security Committee Public Hearing

Tuesday, March 11, 2014

**This testimony is in support of Raised Bill No. 427 (LCO No. 2087) amending Public Act 13-272, An Act Requiring Working Smoke and Carbon Monoxide Detectors in Certain Residential Buildings at the Time Title is Transferred.**

The title of the law clearly expresses the purpose of the 2013 legislation. The seller of certain property containing a residential building designed to be occupied by one or two families, when the property transfer occurs on or after January 1, 2014, must provide an affidavit to the buyer certifying:

- that the building permit for new occupancy was issued on or after October 1, 1985; or
- that the residential building is equipped with smoke detectors that comply with the new law.

In addition, for dwellings for which a building permit for new occupancy was issued before October 1, 2005, the affidavit must also certify:

- that the building is equipped with carbon monoxide detectors that comply with the law; or
- that there is no risk of carbon monoxide poisoning because the residential building does not contain a fuel burning appliance, fireplace or attached garage.

To comply with the law, the seller must be able to affirmatively state that the smoke detection equipment is capable of sensing visible or invisible smoke particles, and that the carbon monoxide detectors are capable of showing the amount of carbon monoxide present in parts per million. In addition, the seller must be able to state that any smoke detector and carbon monoxide detector is:

- installed in accordance with the manufacturer's instructions;
- operating within the standards under which the equipment was tested and approved; and
- capable of providing an alarm suitable to warn occupants when the equipment is activated.

The existing law also requires the seller to state in the affidavit that a smoke detector is installed in the immediate vicinity of each bedroom.

The existing law also contains a list of transfers that are exempt from the affidavit requirement. The proposal adds a few new exemptions.

If a seller is unwilling or unable to provide the requisite affidavit to the buyer at the time of transfer, the law requires the seller to provide a credit to the buyer in the amount of two hundred fifty dollars (\$250.00).

The law serves a commendable and important purpose of protecting the safety of those residing in dwellings constructed prior to the dates when the law required the installation of smoke and carbon monoxide detectors. The existing law, however, imposes what could be interpreted as an unreasonable burden on the average seller of a residential dwelling. The typical seller is not one who buys and sells residential homes for a living. The typical seller is not an expert on equipment for detecting smoke and carbon monoxide.

Many attorneys representing sellers in residential real estate transactions have been advising their clients to give the buyer the \$250.00 credit rather than fill out the affidavit. This is not necessarily because the home lacks smoke and carbon monoxide detectors in working condition, but rather because of the representations that the sellers have to make concerning those devices. Specifically, the existing law requires the seller to affirmatively state that any needed smoke detection equipment and carbon monoxide equipment required to be on the premises comply with the law. In order to state that the equipment complies with the law, the seller must essentially certify that the equipment does "not exceed the standards under which the equipment was tested and approved." Apart from the fact that this language appears to be taken directly from a technical manual, it is difficult if not impossible for any person who is not involved in either the design, production or testing of this equipment to make this representation. Moreover, the average sellers can only attest to something based upon their personal knowledge, absent the professional opinion from an expert.

Raised Bill No. 427 makes modest changes to Public Act 13-272 in order to make it more practical and to increase the likelihood that a seller will provide the affidavit to a buyer. Now the seller can present an affidavit certifying, to the best of their knowledge and belief, that any smoke detection equipment and carbon monoxide equipment that is required is both present and legally compliant. The changes facilitate the seller's ability to state that the detection equipment complies with the law, since the seller will no longer be required to state that the smoke and carbon monoxide detectors do "not exceed the standards under which the equipment was tested and approved." The proposed revision removes that language.

The proposed revision in Raised Bill No. 427 does remove the seller's representation that the smoke detector complies with the law because smoke detection equipment is installed in the immediate vicinity of each bedroom. The revision keeps the important representation that the smoke detectors are installed in accordance with the manufacturer's instructions, and these instructions include directions on the location of the detection equipment in the home. Moreover, as the law presently exists, it may be interpreted as simply requiring that any smoke detectors in the home are installed in the immediate vicinity of each bedroom, thereby omitting the need for representations about smoke detectors placed elsewhere in the residence.

CATIC respectfully suggests another change to clarify the existing law's provisions so that real estate professionals, sellers and buyers can better ascertain the law's applicability. Although the original law seems to apply to transactions involving residential units in a condominium,

cooperative or planned community, CATIC suggests placing additional language in subsection (a) of Section 1 to confirm that the law applies to transactions involving the transfer of residential units in a common interest community.

The remaining changes in the Raised Bill include additional exclusions for other parties or situations where the grantor is unfamiliar with the property but where public policy has identified an interest in facilitating the property's transfer. To be more specific, the revision adds an exclusion for transfers by a judgment of strict foreclosure or by foreclosure by sale. There are also new suggested exclusions for short sale and relocation transfers.

CATIC supports Raised Bill No. 427, with one minor addition to clarify the law's applicability to transactions involving residential units in a common interest community.

Respectfully submitted,

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CATIC